

Editorial

**PASCITE GREGEM DEI: CALL FOR REFORM
OF PENAL SANCTIONS**

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Editor-in-Chief

The Church, the body of Christ, is ever young and ever vibrant. The vitality of the whole Church 'never appears to be aging'. Her penal law is meant to correct herself and its members to keep the Church ever answerable to Her master and to the world. Pope Francis while promulgating the reformed Book VI of the Code of Canon Law (CIC 1983) through his Apostolic Constitution *Pascite gregem Dei* taught that amid today's rapid social changes, "we are experiencing not simply an epoch of changes but an epochal change. Thus, it has become clear that a fitting response to the needs of the Church throughout the world calls for a revision of the penal discipline in the Code of Canon Law promulgated by Saint John Paul II on 25 January 1983. Church's pastors can employ it as a more flexible means of correction and salvation, capable of being applied swiftly and with a pastoral charity in order to avoid more serious evils and to bring healing to injuries caused by human weakness."¹ The style of 'cover-up' when issues happen in the Church's administration is substituted by facing them boldly and going for corrections, has become the style of Church administration today, and it is explicit through this new change in the penal law.

Pope Francis on 23 May 2021 promulgated the reformed Book VI of CIC (1983) and it becomes binding on the Latin Church on 8th December 2021. He reminds the pastors that they should resort to the penal system whenever it is required, keeping in mind the three aims

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¹ Pope Francis, Apostolic Constitution *Pascite gregem Dei*, 23 May 2021, Cf. https://www.vatican.va/content/francesco/en/apost_constitutions/..., accessed on 30 May 2021.

that make it necessary in the ecclesial community: the restoration of the demands of justice, the correction of the guilty party, and the repair of scandals. According to him, canonical sanctions also have a reparative and salvific end and are primarily directed to the good of the faithful. Therefore, in continuity with the overall features of the canonical system, the new text of the Book VI of CIC (1983) introduces various modifications to the law presently in force and introduces several new types of crimes, corresponding to the growing need in various communities to ensure the restoration of justice and order that the delict is infringed. While *Pascite gregem Dei* aims at the reform of the CIC (1983), it is also an invitation for the revision of the Penal Sanctions of CCEO (1990) of the Oriental Churches.

This volume of *Iustitia* is dedicated to the study of the revised Penal Law of the CIC (1983). All the articles of this volume deal with the same intention directly or indirectly. To facilitate the readers the text of the revised penal law of CIC (1983) is made available in the section on documents. It forms the appendix of the present volume. The text of Book VI has also been improved from a technical aspect, especially with regard to fundamental issues of criminal law, such as the right to self-defence, the prescription of penal action, and the need for greater precision in the determination of penalties. This approach is consonant with the requirements of penal law, thus providing ordinaries/hierarchs and judges with objective criteria for identifying the most appropriate sanction in individual cases. The revision also respects the principle of reducing cases in which the imposition of a sanction is left to the discretion of authorities, so that in the application of penalties, *servatis de iure servandis*, ecclesial unity will be fostered, especially in the case of those delicts that cause the greatest harm and scandal in the community. Pope Francis hopes that the revised Penal Law of the Book VI will be an instrument for the good of souls and that its prescriptions will be applied by the Church's pastors, whenever necessary, with justice and mercy, may impose punishment when the good of the faithful demands it.² The Indian civil law especially on the Protection of Children from the Sexual Offences (POCSO) Act, 2012 of India, also analyzed in this volume for a comprehensive vision on this issue from an Indian perspective.

² Pope Francis, Apostolic Constitution *Pascite gregem Dei*.

The first article of the issue takes up the revised Book VI of CIC (1983). The article of *Biju Varghese Perumayan* titled "Revised Penal Sanctions of CIC Book VI and CCEO Title XXVII: A Comparative Reading" is an attempt to verify whether, through the revision of Book VI of CIC, the differences and similarities between the Codes have increased or not. After a comparative reading of the texts *Biju Varghese* shows that while the main differences between the Codes in the penal norms continue even after the revision of Book VI of CIC, certain similarities have increased between the Codes due to the modifications in the revised text.

Sebastian Payyappilly in his article, "Preliminary Investigation and the Application of CCEO c. 1473 (CIC c. 1722): A Reflection in the Light of *Vademecum* (2020)," argues that the preliminary investigation is a prerequisite for the development of a penal trial to find the credibility of the alleged delict. The proper hierarch/Ordinary is empowered to impose an administrative leave on the accused from the outset of the investigation. Although administrative leave is not a penalty, it restricts the exercise of the accused person's rights. The *Vademecum-2020* establishes that the "administrative leave" at the investigation should not be a 'suspension' but only a 'prohibition'.

"Sexual Abuse of Minors by Clerics: The Disciplinary Directives of Pope Francis" by *Benny Sebastian Tharakunnel* draws our attention to the sexual abuse of minors committed by clerics and consecrated persons. Without any doubt, this issue has put a question mark on the moral credibility of the Church. Proclamation of the Gospel of Love would not be effective unless and until this issue is addressed in the most effective way. The efforts made during the pontificate of Pope Francis to prevent the occurrences of such heinous crimes that disfigure the face of the Church, ensure the protection of minors, and heal the wounds inflicted by those acts have been sincere attempts from the part of the Church to care for and protect the minors and the vulnerable adults. The stringent measures introduced to punish the clerics who have committed the crimes and their competent superiors who either because of their negligence made it possible for the crime to occur or tried to cover it up, transmit the strong message that the Church means what it preaches. It is also one of the significant merits of the revised Book VI of CIC.

Varghese Poothavelithara devotes his attention to presenting "The Mode of Exercise of the Power of Governance in the Internal

Forum.” He argues that the internal forum, together with the external forum, is an integral part of the canon law system, and is also one of its specific or unique characteristics. While giving norms on the power of governance, CIC and CCEO state that this power is exercised either in the external forum or in the internal forum. The juridical character of the internal forum is, thereby, clearly affirmed. The internal forum is no more considered as an exclusive domain of moral order. It is also established in the canonical doctrine that the one and the same power is exercised in both forums. It is not the nature of the power, but the manner of its exercise that distinguishes between the two forums. For the internal forum, the power is exercised in a hidden or secret manner. Those who are entrusted with the ordinary power, especially the executive power of governance, and also those to whom the law grants power in the internal forum either ordinarily or in extraordinary circumstances are competent to use it according to the prescriptions of law. Mainly favours, such as dispensations of impediments, remissions of penalty, etc. are granted in the internal forum. The manner or procedure to obtain a dispensation or absolution in the internal forum also explains the special characteristics of the internal forum.

Davis Panadan Varghese and *Sini John* together portrait “The Protection of Children from the Sexual Offences Act (POCSO), 2012: Strong Provisions or Weak Implementation.” Both authors draw attention through their article to the fact that in order to handle the obnoxious crimes of sexual nature against children, the Ministry of Women and Child Development of the Government of India introduced strict legal provisions through the POCSO Act, 2012. The act defines a child as any person below the age of 18 years and regards the best interests and welfare of the child as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual, and social development of the child.” It defines different forms of sexual abuse, penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems such sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis a child, like a family member, police officer, etc. People involved in child trafficking for sexual purposes are also punishable under the provision relating to abetment in the act.

Shaji Jerman offers a manual to the readers for making an easy reading of the revised text of CIC Book VI through his contribution, namely, "Reformed Penal Sanctions in the Church (Book VI of CIC): Additions, Omissions, and Modifications- A Guide to Understanding the Changes in the Canons." He clearly indicates the additions, omissions, and modifications done in the text of Book VI. He underlines one of the most important responsibilities of the head of a Church in safeguarding justice. He quotes a phrase from CIC can. 1311 §2, to emphasize the role of the one who is at the head of a Church, "he must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice, and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal." He provides subheadings to canons to understand easily the meaning and significance of the texts. He also cites the parallel canon numbers from CCEO wherever it is available. In the footnotes, the additions, omissions, and modifications made in the canons are indicated by striking them off or by underlining them.

The editorial board would like to thank the contributors to this volume for their reflections and creative suggestions that they have made through their scientific and systematic presentation of their themes. We would like to place on record the committed service rendered by *Prof. Dr Cherian Thunduparambil CMI*, since the inception of the journal *Iustitia* as its Chief editor. His sincere dedication as the Chief editor gave *Iustitia* its unique place in the world of Canon Law and in the universal Church. It is teamwork that we are initiating through this volume. My colleague, *Prof. Dr Sebastian Payyappilly CMI*, took up the technical as well as the language corrections of the volume. I co-ordinate the authors and unite the thematic organization of the Journal, *Iustitia*.